

III. REMARKS

Claims 1-20 are rejected and pending. Independent claims 21 and 22 have been added. With the new claims added and the remarks provided below, Applicants respectfully request reconsideration and a withdrawal of all rejections.

Responsive to the rejections of claims 1-9 and 13-19 under 35 U.S.C. § 102(e), *Foster* fails to teach each and every element of an embodiment of a device as claimed in the present application. Claim 1 generally recites a medical grasping device comprising an elongate control member, an outer sheath surrounding the elongate control member, and a control assembly disposed at a proximal end of the outer sheath. Contrarily, *Foster* is absent any teaching of an embodiment comprising the elongate control member, the outer sheath and the control assembly as claimed.

In *Foster*, the external constraining mechanism 14 and the actuating member 29 are alternative elements and do not function together in one embodiment. In a first embodiment, *Foster* teaches a device comprising an elongated member 11 and an external constraining mechanism 14, e.g., a coaxial outer sheath (see Figure 1 of *Foster*). *Foster*, column 6, lines 32-42. However, in an alternate embodiment, *Foster* teaches a device comprising the elongated cylindrical member 11 and an actuating (internal) member 29 (see Figures 17 and 18) rather than the external constraining mechanism 14. Figures 17 and 18 depict "a pictorial view of alternate embodiment of device 10 of FIG. 1 that includes an actuating member 29 rather than an external constraining mechanism, for opening the basket to receive a calculus 24." Col. 9, lines 31-34. Since *Foster* fails to teach an embodiment having each and every element of the claimed invention, the rejection of claim 1 under 35 U.S.C. § 102(e) should be withdrawn.

In the Office Action, the Examiner appears to have combined the elements of *Foster's* alternate embodiments. In *Foster*, the embodiments include either the external constraining mechanism 14 or the actuating member 29 to achieve the function of opening the grasping members 13 to receive a calculus. Col. 9, lines 31-

34. *Foster* provides no suggestion or motivation to combine these embodiments. Hence, combining the alternate embodiments would be improper.

Claims 2-9 and 13-19 are dependent on claims which depend generally from claim 1. Thus, claims 2-9 and 13-19 are allowable for the reasons provided above.

Responsive to the rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Foster* in view of *Avellanet*, the combination does not teach or suggest all the elements of claim 7. Claim 7 is a dependent claim which depends generally from claim 1. As stated above, *Foster* does not teach or suggest all of the elements of claim 1 and *Avellanet* does not teach or suggest elements to cure *Foster's* deficiencies. In addition, there is no suggestion or motivation to combine *Foster* and *Avellanet*.

Responsive to the rejections of claims 10, 11, 12, and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Foster* in view of *Hillstead*, the combination does not teach or suggest all the elements of dependent claims 10, 11, 12, and 20. Claims 10, 11, 12, and 20 are dependent claims which depend generally from claim 1. As stated above, *Foster* does not teach or suggest all of the elements of claim 1 and *Hillstead* does not teach or suggest elements to cure *Foster's* deficiencies. In addition, there is no suggestion or motivation to combine *Foster* and *Hillstead*.

New independent claim 21 calls for a medical grasping device comprising an elongate control member including a distal tip section and at least one loop proximal the distal tip section. Additionally, new independent claim 22 calls for a medical grasping device wherein the grasping portion comprises a plurality of preformed wire loops of nitinol that upon deployment extend outwardly. Each of the cited references or any combination thereof fails to teach all of the elements of new claims 21 and 22.

Therefore, claims 1-22 are in a condition for allowance and such action is earnestly solicited.

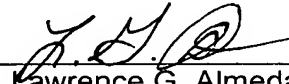
Applicants have calculated additional fees that are presently due in connection with the filing of this Paper and authorize charging the deposit account of the Applicants' attorney, as indicated in the Transmittal accompanying this

Statement. In addition, Applicants authorize charging of any fee deficiency to the deposit account of Applicants' attorney, as indicated in the Transmittal accompanying this Statement.

Respectfully submitted,

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Date



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☐ 37 C.F.R. 1.34(a)